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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JONATHAN DALE

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Appeal 2009-013626  
Application 10/608,876  
Technology Center 3600

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Decided: May 26, 2010

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Before HUBERT C. LORIN, ANTON W. FETTING, and  
KEVIN F. TURNER, *Administrative Patent Judges*.

TURNER, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF CASE

Appellant seeks our review under 35 U.S.C. § 134 of the final rejections of claims 1-31. We have jurisdiction under 35 U.S.C. § 6(b).

## SUMMARY OF THE DECISION

We AFFIRM.<sup>1</sup>

## THE INVENTION

Appellant's claimed invention relates to a system and method for dynamic service scheduling which can create itineraries that link to any number of services for fulfilling events for a user's tasks. (Spec. 3).

Independent claim 1, which is deemed to be representative, reads as follows:

1. A method for dynamic service scheduling comprising:
  - identifying a template specifying a plurality of events;
  - determining a plurality of consumer descriptors;
  - accessing a remote service directory having service descriptors for each of a plurality of services;
  - filtering the services from the service directory based on the service descriptors, the events, and the consumer descriptors to determine potential ones of the services for filtering the events;
  - querying each of the potential services for additional service descriptors;

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<sup>1</sup> Our decision will make reference to the Appellant's Appeal Brief ("App. Br.," filed Mar. 16, 2009) and Reply Brief ("Reply Br.," filed Jun. 30, 2009), and the Examiner's Answer ("Ans.," mailed Apr. 30, 2009).

filtering the potential services based on the additional service descriptors, the events, and the consumer descriptors to determine selected ones of the services for fulfilling the events;  
identifying service links for accessing the selected services;  
modifying the template to associate the service links with the events;  
determining whether each of the events in the template has an associated service link; and  
when each of the events in the template has an associated service link, presenting the template for acceptance.

## THE REJECTION

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Rose et al.	US 2008/0010105 A1	Jan. 10, 2008
Sobalvarro et al.	US 2006/0287897 A1	Dec. 21, 2006

The Examiner rejected claims 11-20 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Additionally, the Examiner rejected claims 1-31 under 35 U.S.C. § 103(a) as unpatentable over Rose and Sobalvarro.

## ISSUES

Appellant argues that independent claim 11 drawn to a “consumer system” that recites a database, an interface, and an agent is tied to a machine, and thus statutory under 35 U.S.C. § 101. (App. Br. 14, *see also* Reply Br. 2). Additionally, Appellant argues that the combination of Rose and Sobalvarro fails to teach or suggest the steps of identifying a template specifying a plurality of events and modifying the template to associate the

service links with the events, as recited by representative independent claim 1. (App. Br. 15) (*See also* Reply Br. 2). Independent claims 11, 21, and 31 recite substantially similar limitations and Appellant does not set forth additional arguments as to their patentability. (App. Br. 17). Further, Appellant argues that the Examiner has failed to point to any reason for modifying Rose's web page to include Sobalvarro's package offerings. (App. Br. 16).

In response, the Examiner finds that under the broadest reasonable interpretation consistent with Appellant's Specification, the claimed elements of the "consumer system" of claim 11 may be interpreted to be software, and thus non-statutory under 35 U.S.C. § 101. (Ans. 3-4). Additionally, the Examiner finds that the combination of Rose and Sobalvarro teaches the steps of identifying a template specifying a plurality of events and modifying the template to associate the service links with the events, as recited by representative independent claim 1. (Ans. 4-6).

Only those arguments actually made by Appellant have been considered in this decision. Arguments which Appellant could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Thus, the issues arising from the respective positions of Appellant and the Examiner are:

Has Appellant shown that Claim 11 is not directed to a process or computer software, but rather is directed to a "consumer system" that includes, at a minimum, a database, an interface, and an agent, and thus statutory under 35 U.S.C. § 101?

Has Appellant shown that that the combination of Rose and Sobalvarro fails to teach or suggest the steps of identifying a template specifying a plurality of events and modifying the template to associate the service links with the events, as recited by representative claim 1?

### FINDINGS OF FACT

The record supports the following findings of fact (FF) by at least a preponderance of the evidence. *In re Caveney*, 761 F.2d 671, 674 (Fed. Cir. 1985) (explaining the general evidentiary standard for proceedings before the Office).

#### *Claim Interpretation*

1. Appellant's Specification describes that "interface 42 may include any suitable combination of hardware and/or logic for interacting with other components." (p. 12, ll. 27-30).

2. Appellant's Specification describes the functional elements for "agent 40" include "an interface 42, a description 44, a knowledge base 46, a plan 48, and a plan processing engine 50." (p. 10, ll. 9-11).

3. The ordinary and customary meaning of a "database" is "2) [a] collection of data fundamental to a system." (*See The Authoritative Dictionary of IEEE Standards Terms* (7<sup>th</sup> Ed. 2000)).

4. The ordinary and customary meaning of an “event” is “(3) something that occurs in a certain place during a particular interval of time.”<sup>2</sup> (p. 3, ¶ [0011]).

*Rose*

5. Rose is directed to a web-based reservation booking system for merchants. (Abs.).

6. Figure 5A of Rose depicts a web home page which allows a user to search and make online reservations from a list of affiliated proprietors in the restaurant, golf, and bed & breakfast industries. (Fig. 5A, ¶ [0052]).

7. Rose describes that the web home page has links to the different “super-communities.” These “super-communities” are organized based on their respective industry. (¶ [0052]).

8. Rose describes that its reservation system may be used for any industry where advanced bookings by customers is commonplace such as a salon, spa, cinema, sports, performing arts, medical industries, etc. (¶ [0054]).

9. Rose describes that once a user navigates to a specific “super-community,” a second data entry window allows the user to search multiple available reservations at different restaurants affiliated with the “super-community” based upon the user’s search criteria. (¶ [0056]).

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<sup>2</sup> *Event Definition*, Dictionary.com Unabridged. Random House, Inc., <http://dictionary.reference.com/browse/event> (last visited May 17, 2010).

*Sobalvarro*

10. Sobalvarro is directed to a system and method for grouping and selling products or services such as travel packages. (Abs.).

11. Sobalvarro describes that its system dynamically generates a webpage for a consumer which includes at least one travel package based on an elicited consumer constraint at least one travel package template, and at least one stored available travel component description. (¶ [0024]).

12. Sobalvarro describes that consumer constraints are based on desired trip criteria. (¶ [0083], *see also* Fig. 2C).

13. Sobalvarro describes that if a consumer selects an event's hypertext link a more detailed descriptive about that event will be displayed. (¶ [0100], *see also* Fig. 2E).

14. Sobalvarro describes that the detailed description includes information such as transportation, hotel, car rental, restaurant, entertainment and/or other components of the package and may give the consumer the option of requesting upgrades and/or adding on optional components. (¶ [0100]).

## PRINCIPLES OF LAW

*Statutory Subject Matter*

“The four categories [of § 101] together describe the exclusive reach of patentable subject matter. If a claim covers material not found in any of the four statutory categories, that claim falls outside the plainly expressed scope of § 101 even if the subject matter is otherwise new and useful.” *In re Nuijten*, 500 F.3d 1346, 1354 (Fed. Cir. 2007). A claim to a data structure



per se is non-statutory. *See In re Warmerdam*, 33 F.3d 1354, 1360-61 (Fed. Cir. 1994). “Data structures not claimed as embodied in computer-readable media are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer.” MPEP § 2106.01(I) (8th ed., Rev. 6, Sept. 2007) (citing *Warmerdam*, 33 F.3d at 1361). Similarly, a claim to a computer listing per se is non-statutory. *Id.* “[C]omputer programs claimed as computer listings per se, i.e., the descriptions or expressions of the programs, are not physical ‘things.’ They are neither computer components nor statutory processes, as they are not ‘acts’ being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program’s functionality to be realized.” *Id.*

### *Obviousness*

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007).

## ANALYSIS

*Claims 11-20 rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.*

Appellant generally argues that Claim 11 is not directed to a process or computer software, but rather is directed to a “consumer system” that includes, at a minimum, a database, an interface, and an agent. (App. Br. 14, *see also* Reply Br. 2). Specifically, Appellant argues that “. . . the interface and agent elements rejected by the Examiner are ‘incorporated in and/or provided by any suitable network accessible equipment.’ Specification, p. 12.” (App. Br. 14, *see also* Reply Br. 2). We are not persuaded by Appellant’s arguments and agree with the Examiner that independent claim 11 is indeed drawn to “software per-se,” and thus directed towards non-statutory subject- matter. (Ans. 3-4).

In making this determination, we find that contrary to Appellant’s contention that an “interface” as claimed is tied to a machine, Appellant’s Specification describes that an “interface” may include hardware *and/or* software. (FF 1). Accordingly, under the broadest reasonable interpretation consistent with Appellant’s Specification, an interface may be software. Similarly, Appellant’s Specification describes that an “agent” consists of “an interface 42, a description 44, a knowledge base 46, a plan 48, and a plan processing engine 50” (FF 2), which commensurate with Appellant’s Specification, we also interpret to be software. Lastly, with respect to the claimed “database,” we interpret a database to be a collection of data stored within a file (FF 3), and not directed towards any type of apparatus or hardware which would define the structural and functional interrelationships

between the software and other claimed elements of a computer to permit the computer program's functionality to be realized.

Thus, we find that the claimed "consumer system" of independent claim 11 may be construed solely as software and/or data constructs since it recites no apparatus or hardware that would instantiate any of the instructions contained within the claimed elements. Therefore, since claim 11 recites no more than software, logic or a data structure, it does not fall within any statutory category. *In re Warmerdam*, 33 F.3d at 1361. Accordingly, we find the Examiner did not err in rejecting claims 11-20 under 35 U.S.C. § 101 as directed to non-statutory subject matter.

*Claims 1-31 rejected under 35 U.S.C. § 103(a) as being obvious over Rose and Sobalvarro.*

*Independent claims 1, 11, 21, and 31*

Appellant argues that the combination of Rose and Sobalvarro fails to teach or suggest the step of identifying a template specifying a plurality of events, as recited by representative independent claim 1. Specifically, Appellant argues that a restaurant reservation as disclosed by Rose is not the same as an "event" as required by Appellant's claim 1. (App. Br. 15, *see also* Reply Br. 2-3). Independent claims 11, 21, and 31 recite substantially similar limitations and Appellant does not set forth additional arguments as to their patentability. (App. Br. 16). We are not persuaded by Appellant's argument and agree with the Examiner that Rose teaches a template specifying a plurality of events. (FF 6). (*See also* Ans. 7-8).

In making this determination, we find that that the online reservation system of Rose which discloses a web page home with links to different “super-communities” is equivalent to the template as claimed by Appellant. (FF 6, 7). These “super-community” pages allow users to make reservations at establishments such as restaurants, salons, spas, cinemas, sports, and performing arts centers affiliated within the specific “super-community” based upon a users’ search criteria. (FF 6, 7, 9). While we agree with the Appellant that Rose does not explicitly refer to these reservations as “events,” we find the reservations disclosed by Rose to be an obvious equivalent to an “event” as claimed by Appellant. Moreover, we find that an “event” is something that occurs in a certain place at a certain time which would include a dinner reservation. (FF 4). Thus, the combination of Rose and Sobalvarro makes obvious the step of identifying a template specifying a plurality of events, as recited by representative independent claim 1. Therefore, Appellant’s argument is not persuasive as to error in the rejection with respect to claims 1, 11, 21, and 31.

Additionally, Appellant argues that the combination of Rose and Sobalvarro fails to teach or suggest the step of modifying the template to associate the service links with the events, as recited by representative independent claim 1. (App. Br. 16). Specifically, Appellant argues that “. . . Sobalvarro's package offerings are fixed and cannot be modified.” (App. Br. 16, *see also* Reply Br. 2-3). Independent claims 11, 21, and 31 recite substantially similar limitations and Appellant does not set forth additional arguments as to their patentability. (App. Br. 17). We are not persuaded by Appellant’s arguments and agree with the Examiner that

Sobalvarro teaches a website that dynamically generates a travel package for a consumer based on consumer constraints (i.e., criteria). (FF 11, 12). Further, Sobalvarro teaches a hypertext link which displays a more detailed description about that event. (FF 13). Thus, contrary to Appellant's contention that Sobalvarro's offerings cannot be modified, Sobalvarro does indeed modify its web page (i.e., template) to associate service links such as transportation, hotel, car rental, restaurant, and entertainment to the travel packages (i.e., event) generated. Therefore, the combination of Rose and Sobalvarro makes obvious the step of modifying a template to associate service links with the events, as recited by representative independent claim 1. Accordingly, Appellant's argument is not persuasive as to error in the rejection with respect to claims 1, 11, 21, and 31.

Lastly, Appellant argues that, "... the Examiner fails to point to any reason for modifying Rose's web page to include Sobalvarro's package offerings." (App. Br. 16). To the extent Appellants seek an explicit suggestion or motivation in the reference itself, this is no longer the law in view of the Supreme Court's holding in *KSR Int'l Co.*, 550 U.S. 418. The Examiner has provided an articulated reasoning with rational underpinning for why a person with ordinary skill in the art would modify the web-based reservation booking system of Rose which identifies a template specifying a plurality of events (FF 5, 6) to incorporate the step of modifying a template to associate service links with the events, as taught by the system for selling dynamically generated travel packages of Sobalvarro. (FF 10, 11). Specifically, the Examiner articulates a rationale based on providing additional information such as related service links taught by Sobalvarro to

the itinerary information provided by Rose, thereby modifying the web page to incorporate this information. (Ans. 5).

We agree with the Examiner, and find that the modifications proposed by the Examiner are nothing more than the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement. *See KSR*, 550 U.S. at 417. Further, Appellants have not proffered any arguments as to why these substitutions of known elements would not be obvious, but only make assertions as to their inoperability. (App. Br. 16). Therefore, the combination of Rose and Sobalvarro makes obvious the subject matter of independent claims 1, 11, 21, and 31. Accordingly, we find these arguments unpersuasive.

*Dependent claims 2-10, 12-20, and 22-30*

Appellant does not separately argue claims 2-10, 12-20, and 22-30 which depend from claims 1, 11, and 21, respectively, and so has not shown that the Examiner erred in rejecting claims 2-10, 12-20, and 22-30 under 35 U.S.C. § 103(a) as unpatentable over Rose and Sobalvarro for the same reasons we found as to claims 1, 11, 21, and 31, *supra*.

### CONCLUSION OF LAW

We conclude that the Appellant has not shown that Claim 11 is directed to a “consumer system” that includes, at a minimum, a database, an interface, and an agent, and thus statutory under 35 U.S.C. § 101.

We conclude that the Appellant has not shown that the combination of Rose and Sobalvarro fails to teach or suggest the steps of identifying a template specifying a plurality of events and modifying the template to associate the service links with the events, as recited by representative claim 1.

### DECISION

The decision of the Examiner to reject claims 11-20 under 35 U.S.C. § 101 is **AFFIRMED**. Additionally the decision of the Examiner to reject claims 1-31 under 35 U.S.C. § 103(a) is **AFFIRMED**.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv)(2007).

### AFFIRMED

ack

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